

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:10-CR-130
)	(VARLAN/SHIRLEY)
DAVID M. DESMIT,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This case is now before the Court on the Defendant's Motion for Leave to File Motion to Continue Late [Doc. 17], filed on November 22, 2010, and the Defendant's Motion to Continue the Trial [Doc. 18] filed on November 22, 2010. The parties appeared before the undersigned for a hearing on November 30, 2010. Assistant United States Attorney Melissa M. Millican was present on behalf of the Government. Attorney Laura E. Davis was present on behalf of the Defendant, who was also present.

At the hearing, the Defendant explained that the Motion to Request for Leave to File Motion to Continue Late [Doc. 17] was the result of the defense counsel's recent illness. The Defendant further explained that he is requesting a trial continuance because he needs additional time to obtain Tennessee Bureau of Prison records, Blount County medical records, and engage in negotiations with the Government. The Government does not oppose the Defendant's request for a trial continuance. The Government stated that it would take steps to expedite the process of getting the requested records to the Defendant.

The parties agreed to request a new trial date of January 18, 2010. The parties both stated that all time between the November 30, 2010 motion hearing and the requested new trial date of January 18, 2010, should be fully excludable time under the Speedy Trial Act. Defense counsel stated that the Defendant was aware of and understood his speedy trial rights. Defense counsel further stated that she had discussed the need for a trial continuance with the Defendant, and that the Defendant wanted the trial to be continued. The Defendant himself also stated that he understood his speedy trial rights and that he would remain in custody pending the new trial date.

The Court finds that the Defendant's Motion for Leave to File Motion to Continue Late and the Motion to Continue the Trial are well-taken. Accordingly, the Motion for Leave to File Motion to Continue Late [**Doc. 17**] and the Motion to Continue [**Doc. 18**] are **GRANTED** and the trial of this matter before the Honorable Thomas A. Varlan, United States District Judge, is **CONTINUED to January 18, 2011**.

The Court also finds that the ends of justice served by continuing the trial outweigh the best interest of the Defendant and the public in a speedy trial. See 18 U.S.C. § 3161(h)(7)(A). The Defendant needs additional time to review the discovery in this matter and investigate the case. The Court finds that this investigation and discovery review could not take place before the December 14, 2010 trial date, despite counsel's use of due diligence. See 18 U.S.C. § 3161(h)(7)(B)(iv). Accordingly, the Court finds that Defendant's Motion to Continue [**Doc. 18**] is well-taken, and therefore, it is **GRANTED**. The Court therefore finds that all time between the motion hearing held on November 30, 2010, and the new trial date of January 18, 2011 is fully excludable time under the Speedy Trial Act.

With regard to other scheduling in this case, the plea negotiation deadline is extended to

January 4, 2011.

IT IS ORDERED:

- (1) The Defendant's Motion for Leave to File Motion to Continue Late [**Doc. 17**] is **GRANTED**.
- (2) The Defendant's Motion to Continue the Trial [**Doc. 18**] is **GRANTED**.
- (3) The trial of this matter is reset to commence on **January 18, 2011**, before the Honorable Thomas A. Varlan, United States District Judge.
- (4) All time between the motion hearing held on **November 30, 2010**, and the new trial date of **January 18, 2011**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein.
- (5) The plea negotiation deadline is extended to **January 4, 2011**.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge